

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ROHINDRANATH KANHOYE,

Plaintiff,

- against -

ALTANA, Inc., et al.,

Defendants.

MEMORANDUM AND ORDER

2:05-CV-04308-ENV-WDW

VITALIANO, D.J.

On October 29, 2007, Magistrate Judge William D. Wall issued a Report and Recommendation on the motion of defendants, in four branches, seeking (1) a conference before the Court to address alleged threats made by plaintiff towards a witness; (2) an order of protection that prevents plaintiff from having any contact with the witness or the individual defendants; (3) an order admonishing plaintiff that any further threats by him will result in sanctions and criminal prosecution; and (4) permission for defendants to rely on the alleged threats as after-acquired evidence against plaintiff to be offered in reply papers on their motion for summary judgment.

Judge Wall recommended that the instant motion be granted in part and denied in part. Specifically, Judge Wall recommended that this Court deny the relief sought in branches (2) and (3), on the ground that defendants provided no legal basis for the award of such relief, and therefore, supplied no reason to hold a conference as requested in the first branch of the motion, which he also found should be denied. Judge Wall did agree, however, that, with respect to the fourth branch of the motion, defendants be allowed to rely on the after-acquired evidence against

plaintiff to the extent that defendants be granted leave to proffer it in the reply papers to be submitted on their motion for summary judgment and that plaintiff, in turn, be permitted to submit a surreply addressing the new matter.

Defendants did not file an objection to Judge Wall's Report and Recommendation. On November 8, 2007, plaintiff's counsel filed a letter which did not object to Judge Wall's Report and Recommendation, but rather sought to "correct the record", i.e., to deny the allegation made by defendants that plaintiff threatened a witness. Accordingly, Rule 72 review of the Report and Recommendation is by the standard applicable where no objection has been made.

In reviewing a report and recommendation of a magistrate judge, a district court "may accept, reject, or modify, in whole or in part, the findings and recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). More critically, in order to accept a magistrate judge's report and recommendation where no timely objection has been made, the "court need only satisfy itself that there is no clear error on the face of the record." Urena v. New York, 160 F.Supp.2d 606, 609-10 (S.D.N.Y. 2001) (quoting Nelson v. Smith, 618 F.Supp. 1186, 1189 (S.D.N.Y. 1985)).

Notwithstanding the applicability of the least critical standard of review, analyzed in any light, Judge Wall's Report and Recommendation is comprehensive and well reasoned. And, because this Court, after careful review, also finds no clear error in it, the Court adopts the Report and Recommendation of Magistrate Judge Wall in its entirety as the opinion of the Court. The parties will note that the filing of this Memorandum and Order does not alter the briefing

schedule previously ordered by the Court, except that, if plaintiff elects to submit one, his surreply must be served on or before December 21, 2007.

SO ORDERED.

DATED: Brooklyn, New York
December 3, 2007

s/Eric N. Vitaliano

ERIC N. VITALIANO
United States District Judge